

Congress of the United States
Washington, DC 20515

April 15, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable R.D. James
Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, D.C. 20310

Re: Docket ID: EPA-HQ-OW-2018-0149

Dear Administrator Wheeler and Assistant Secretary James:

We urge the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) to desist from their efforts to replace the 2015 Clean Water Rule with a much less protective rule. The proposed rule to redefine “waters of the United States” would burden all Americans, but would have especially devastating impacts on vulnerable communities—particularly rural and low-income communities and communities of color, whose members are already disproportionately harmed by unsound or unsafe environmental policies. The agencies’ effort is contrary to the substance and spirit of Executive Order 12898, which mandates that federal agencies seek to achieve environmental justice and address—not exacerbate—their work’s “disproportionately high and adverse human health or environmental effects” on vulnerable populations.¹

The proposed rule to redefine “waters of the United States” would be the biggest rollback of clean water protections in the nearly 47 years since the Clean Water Act became law. The EPA and Army Corps’ “Revised Definition of ‘Waters of the United States’” proposal removes basic Clean Water Act protections for a huge portion of waters across the country, including millions of acres of wetlands, as well as millions of U.S. stream miles.² The loss of protections for so many of our nation’s waters would be devastating. Waters that are already under constant threat of toxic pollution from industry, runoff, and severe weather and natural disasters would be put at even greater risk of harm or destruction. The agencies acknowledge in the proposal that Clean Water Act jurisdiction would be reduced, which would result in many adverse environmental and economic impacts. These include harmful dredging or filling of streams; reduced wetland habitat; greater pollutant loads; increased oil spill risk; increased flood risk; degraded aquatic habitats; greater waterbody impairments; sediment concentrations and depositions; reduced ecosystem values; downstream inundation damages; greater restoration

¹ 59 Fed. Reg. No. 32.

² U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Economic Analysis for the Proposed Revised Definition of “Waters of the United States,” at 219-221 (Dec. 14, 2018), http://www.epa.gov/sites/production/files/2018-12/documents/wotusproposedrule_ea_final_2018-12-14.pdf.

costs; greater drinking water treatment costs; greater dredging costs; and greater spill response cost and spill damage.³ If the EPA were to eliminate Clean Water Act protections as this proposal outlines, the drinking water sources for over 200 million people in the United States could be harmed,⁴ causing potentially dramatic impacts on human health and our economy.

Nationwide, rural and low-income communities and communities of color are already disproportionately exposed to toxins in their drinking water, and also have disproportionately few resources with which to manage that danger.⁵ The agencies acknowledge that their proposed rule will increase pollutant loads,⁶ yet they fail to examine the unjust burden that change would place on vulnerable communities. And according to the EPA's own economic analysis, reduced Clean Water Act coverage would likely result in greater drinking water treatment costs.⁷ Small, rural systems are especially vulnerable to drinking water standard violations, having less capacity and fewer resources with which to manage harmful situations when they occur.⁸ Water bills are already one of the highest utility costs for families — water prices have more than doubled since 2000, far exceeding the rate of increase for other utilities.⁹ And economically depressed small-to-midsized cities and rural areas across the country are facing particular problems as declining tax bases make it difficult for all residents, but especially low-income residents, to afford water service.¹⁰

By eliminating protections for small streams and wetlands, the proposed rule would also hurt our nation's fisheries. Not only would there be a loss of fish habitat, but there would be an increase in pollution — which can degrade fisheries.¹¹ Low-income communities and communities of color rely more heavily on subsistence fishing, which would be threatened by this rule.¹² And for many Native Americans, the survival of cultural identity is strongly linked to fishing and indigenous fish species.¹³

³ U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Economic Analysis for the Proposed Revised Definition of "Waters of the United States," at 133 (Dec. 14, 2018), https://www.epa.gov/sites/production/files/2018-12/documents/wotusproposedrule_ea_final_2018-12-14.pdf.

⁴ Calculations from U.S. Environmental Protection Agency Safe Drinking Water Information System (SDWIS). 2017, <https://ofinpub.epa.gov/apex/sfdw/f?p=108:1::NO::> AND U.S. Census Bureau (USCB). 2017. National and State Population Estimates, <https://www.census.gov/newsroom/press-kits/2017/estimates-demographics.html>.

⁵ Clean Water for All, "Water Health and Equity: The Infrastructure Crisis Facing Low-income Communities and Communities of Color — and How to Solve It," AT 8-10 (October 2018), <http://protectcleanwater.org/wp-content/uploads/2017/09/CWFA-Infrastructure-Health-Equity-White-Paper-Oct-2018.pdf>.

⁶ U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Economic Analysis for the Proposed Revised Definition of "Waters of the United States," at 133 (Dec. 14, 2018).

⁷ U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, "Economic Analysis for the Proposed Revised Definition of 'Waters of the United States,'" at 125, 133-34 (Dec. 14, 2018), https://www.epa.gov/sites/production/files/2018-12/documents/wotusproposedrule_ea_final_2018-12-14.pdf.

⁸ Maura Allaire, Haowei Wu, and Upmanu Lall, Proceedings of the National Academy of Sciences of the United States of America (PNAS), "National Trends in Drinking Water Quality," (February 2018), <https://www.pnas.org/content/pnas/115/9/2078.full.pdf>.

⁹ Joseph Kane and Lynn Broadus, The Brookings Institution, "Striking a Better Balance between Water Investment and Affordability," (Sept. 12, 2016), <https://www.brookings.edu/blog/the-avenue/2016/09/12/striking-a-better-balance-between-water-investment-and-affordability/>.

¹⁰ Rep. Brenda Lawrence, *The Hill*, "Environmental Injustice: Access and Affordability of Clean Water," (May 17, 2018), <https://thehill.com/blogs/congress-blog/politics/388154-environmental-injustice-access-and-affordability-of-clean-water>.

¹¹ Susan Colvin et al., American Fisheries Society, "Headwater Streams and Wetlands are Critical for Sustaining Fish, Fisheries, and Ecosystem Services," at 12-13 (Dec. 2018), <https://fisheries.org/wp-content/uploads/2019/02/Headwaters-Paper-final.pdf>.

¹² Ralph B. Brown and John F. Toth Jr., 17 *Southern Rural Sociology*, "Natural Resource Access and Interracial Associations: Black and White Subsistence Fishing in the Mississippi Delta," at 81, 104 (2001), <http://journalofruralsocialsciences.org/pages/Articles/SRS%202001%2017/SRS%202001%2017%2081-110.pdf>.

¹³ Susan Colvin et al., American Fisheries Society, "Headwater Streams and Wetlands are Critical for Sustaining Fish, Fisheries, and Ecosystem Services," at 17-18 (Dec. 2018).

Estimates show that the proposed rule could end protections for many of the 110 million acres of wetlands in the contiguous United States.¹⁴ Wetlands play a critical role in reducing both the frequency and intensity of floods.¹⁵ Low-income and vulnerable communities are disproportionately impacted by increased flooding, as these communities are more likely to be located in flood-prone areas.¹⁶ Due to the loss of wetland protections, the agencies acknowledge increased flood risk would be a result of their proposed rule.¹⁷

There is abundant evidence that the proposed rule to redefine “waters of the United States” does not protect our nation or its people — and that it fails, in particular, to protect communities that already face undue burdens. In contravention of Executive Order 12898, the proposed rule fails to take into account the adverse impacts it would have “on minority populations, low-income populations, and/or indigenous people.”¹⁸ That failure makes the proposed rule environmentally unjust.

We urge the EPA and Army to Corps to rescind this proposal.

Sincerely,



A. Donald McEachin
Member of Congress



Pramila Jayapal
Member of Congress



Nanette Diaz Barragan
Member of Congress

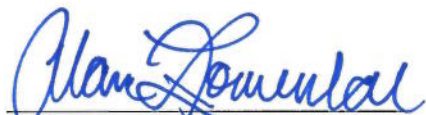
¹⁴ U.S. Fish and Wildlife Service, “Status and Trends of Wetlands in the Conterminous United States 2004-2009,” at 37 (2009), <https://www.fws.gov/wetlands/documents/Status-and-Trends-of-Wetlands-in-the-Conterminous-United-States-2004-to-2009-News-Release.pdf>. AND U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Economic Analysis for the Proposed Revised Definition of “Waters of the United States,” at 219-221 (Dec. 14, 2018), http://www.epa.gov/sites/production/files/2018-12/documents/wotusproposedrule_ea_final_2018-12-14.pdf.

¹⁵ Environmental Protection Agency, “Economic Benefits of Wetlands,” (May 2006), <https://www.epa.gov/sites/production/files/2016-02/documents/economicbenefits.pdf>.

¹⁶ Dalbyul Lee and Juchul Jung, *KSCE Journal of Civil Engineering*, “The Growth of Low-Income Population in Floodplains: A Case study in Austin, TX,” at 684 (2014), <https://link.springer.com/article/10.1007/s12205-014-0205-z>; Jonathan Katz, *The Washington Post*, “Who suffers when disasters strike? The poorest and most vulnerable,” (September 1, 2017), https://www.washingtonpost.com/outlook/who-suffers-when-disasters-strike-the-poorest-and-most-vulnerable/2017/09/01/0efab8a2-8e65-11e7-84c0-02cc069f2c37_story.html.

¹⁷ U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, “Economic Analysis for the Proposed Revised Definition of ‘Waters of the United States,’” at 133 (Dec. 14, 2018).

¹⁸ 84 Fed. Reg. No. 31 at 4203.



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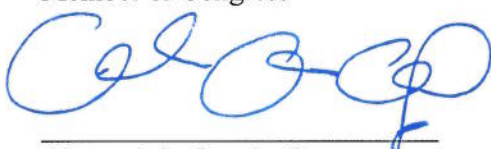
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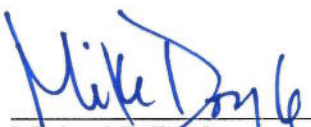
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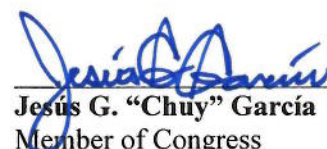
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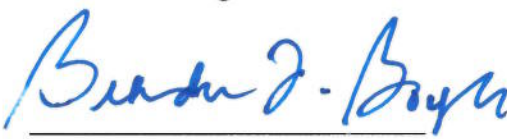



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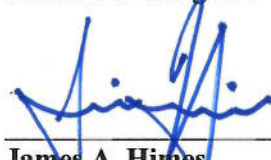

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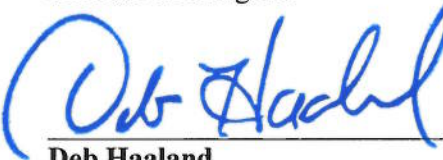

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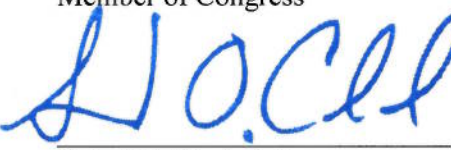

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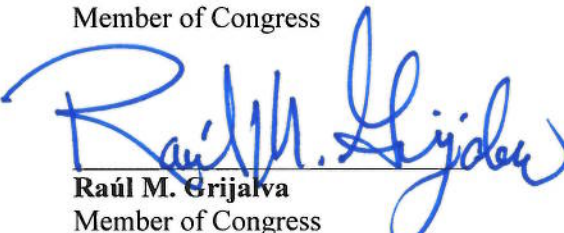

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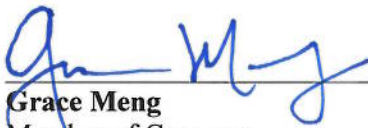
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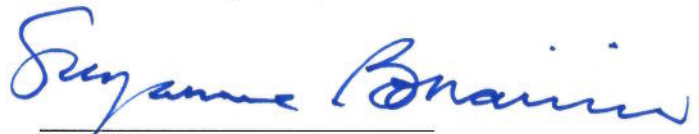
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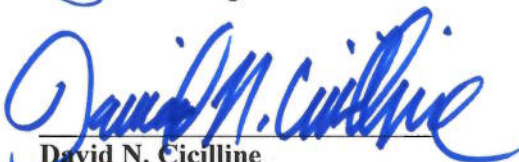
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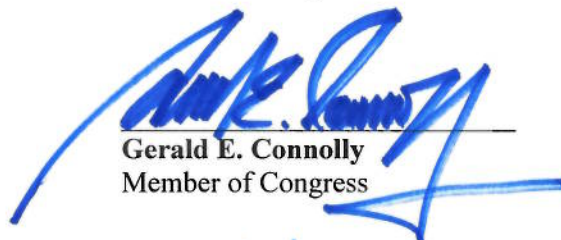
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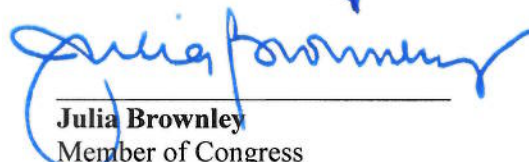
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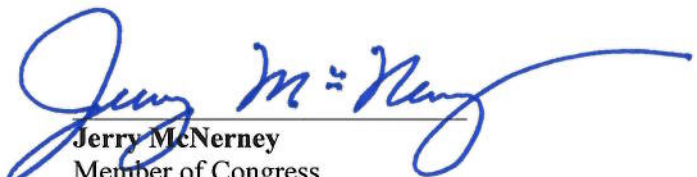
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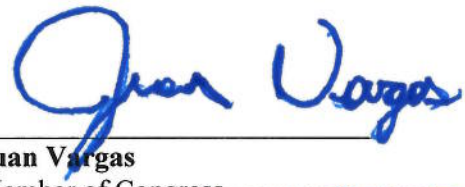

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